(2015) 03 RAJ CK 0215

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 873, 848, 874, 875, 876, 879, 880, 881, 905, 906, 907, 908, 909, 910, 911, 915, 916, 917, 918, 919, 927, 928, 929, 930, 931, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 954, 955, 997, 999, 1001, 1002, 1003, 1049

Meera Marbles and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Rajasthan Land Revenue Act, 1956 — Section 90A, 90A(5), 91
Rajasthan Tenancy Act, 1955 — Section 46

Citation : (2015) 4 RLW 2873

Hon'ble Judges : Sunil Ambwani, A.C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : K.K. Mehrishi, Senior Counsel assisted by Sanjay Mehrishi, Counsel, for the Appellant; Satya Narayan Kumawat, Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard learned counsel appearing for the parties.

2. All these Special Appeals arise out of the judgment of learned Single Judge dated 22.04.2014, by which he has dismissed the writ petitions, filed against the order passed by a Division Bench of the Revenue Board, Rajasthan, Ajmer dated 19.04.2001, allowing 55 Special Appeals. The Division Bench of the Revenue Board set aside the order of Single Member of the Revenue Board dated 10.03.2000, by which the order of Tehsildar, Kishangarh, District Ajmer dated 01.11.1997, taking suo motu action and reviewing his earlier order, was maintained, by which the Tehsildar Kishangarh, District Ajmer had held that the appellants were trespassers on the disputed land, and were directed to be dispossessed.

3. The land in dispute is recorded in Jamabandi for Samvat Year 2045 to 2048, and in Khasra Girdawari for Samvat Year 2045 to 2048 of Khasra Nos. 338, 440, 430 and 431, in the khatedari of Mandir Shri Raghunath Ji. The Mandir Shri Raghunath Ji has not executed any sale deed, gift deed, or Will in favour of the appellants, nor any such document could be executed, as the deity is a perpetual minor, and there was no legal necessity of such transfer. Section 46 of the Rajasthan Tenancy Act, 1955 gives protection to such perpetual minors, and provides that their land cannot be transferred.

4. A report was submitted by Patwari, Sawantsar to Tehsildar, Kishangarh, stating that the appellants have encroached upon the land. A detailed order was passed by Tehsildar, Kishangarh on 11.08.1997, treating the possession of the appellants to be unauthorized, and referring the matter to the District Magistrate, Ajmer. Before the District Magistrate, Ajmer could pass any orders, the appellants deposited the requisite fees for conversion of the land under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the ''Act of 1956''). The Tehsildar, Kishangarh, in view of deposit of the requisite fees for conversion of the land, found an error in his order dated 11.08.1997, and on which he passed an order, reviewing his earlier order taking suo motu action. The Tehsildar Kishangarh re-reviewed his order on 24.11.1997 maintaining his earlier orders of dispossession. Revisions were filed against the order of the Tehsildar, Kishangarh dated 01.11.1997, in which replies were filed on 18.11.1997. In the Revisions, filed in the Revenue Board, it was alleged that the Tehsildar, Kishangarh could not have reviewed his order. The Single Member of the Revenue Board found that the Tehsildar, Kishangarh had finalized the proceedings for eviction, as per his order dated 01.11.1997. The order of Tehsildar, Kishangarh dated 24.11.1997, re-reviewing his order dated 29.09.1997, was contrary to the Rules of Procedure, inasmuch as, he could not have reviewed the order, which he had already reviewed. Learned Single Member of the Revenue Board, however, had found that since the procedure for conversion of the land was pending, it was not proper for the Tehsildar, Kishangarh to reinitiate the process of eviction, especially when the area was declared as an industrial area in the Master Plan.

5. A contempt petition was pending, in which notices were issued. Learned Single Member found that the proceedings initiated by the Tehsildar relate to an industrial area, in which there was no bar to continue with the proceeding under Sections 90A and 91 of the Act of 1956. The contempt proceedings were thus, dropped. All the Revisions were allowed, and the matter was remanded to the Additional Collector for final disposal.

6. The order dated 10.03.2000, passed by learned Single Member of the Revenue Board, was under challenge before the Division Bench of the Revenue Board, which heard the matters, and allowed the 55 Appeals, upholding the order of the Tehsildar dated 24.11.1997, and while setting aside order dated 01.11.1997, passed orders to treat the appellants to be trespassers, and directed

for their eviction.

7. It was submitted before learned Single Judge that the provisions for conversion of the land under Section 91 of the Act of 1956, were applicable to the land, and that the Tehsildar, Kishangarh was competent to pass the order dated 11.08.1997, by which he had reviewed his earlier orders. It was further contended before learned Single Judge that the appellants were in possession of the land in dispute, in pursuance to the unauthorized deeds executed by the Pujaris/Shebaits, and that since a notification notifying Master Plan has been issued under the Rajasthan Urban Improvement Trust Act, 1959, in which the subject land is shown as industrial area, Section 90A and 91 of the Act of 1956 have became inapplicable.

8. Learned Single Judge held that the Rules 3 and 5 of the Rajasthan Land Revenue (Use of Agriculture Land for Non-agricultural Purposes) Rules, 1961 were not applicable as the appellants were not khatedars, nor they were entitled to seek conversion of the land, as they had no authority to occupy the land, which is still recorded in the name of the Deity. On the question of limitation, learned Single Judge relied on the judgments of the Supreme Court in State of Bihar and others v. Subhash Singh [AIR 1997 SC 1390] and State of Bihar and others v. Kameshwar Prasad Singh and Another [AIR 2000 SC 2306], in holding that the Revenue Board had powers to condone the delay. He further relied on Sadhana Lodh v. National Insurance Company Limited and Another [2003 (3) SCC 524], in which it was held that the High Court, in exercise of power under Article 227 of the Constitution of India, is not permitted to review or reweigh the evidence, on which the inferior court or tribunal passes the orders. All the writ petitions were, accordingly, dismissed.

9. Learned counsel appearing for the appellants submits that the judgment of learned Single Judge suffers from manifest errors of law. The writ petitions were dismissed without appreciating the facts. In the instant case, since the Pujaris/ Shebaits have transferred the land under the agreement to sale to the appellants, they were entitled for regularization of their possession, for which they had deposited the fees for conversion, under the Proviso to Sub-section (5) of Section 90A of the Act of 1956. He has relied on the judgments of the Supreme Court in State of Rajasthan v. Padmavati Devi (Smt) (Dead) by LRs. and others [1995 Supp (2) SCC 290], Smt. Kaushalya Devi v. State of Rajasthan [RLW 1989 (2) 380] and Ravindra Kumar v. Swapan Choudhary and Others [2012 (5) WLC (Raj.) 635], in submitting that Section 91 of the Act of 1956 prescribes a summary procedure for eviction from the land, which is found to be in unauthorized occupation. Where the disputed questions of title were involved, a summary procedure under Section 91 of the Act of 1956, for eviction, cannot be adopted for dispossession. In Smt. Kaushalya Devi v. State of Rajasthan (supra), it was held that where a serious dispute was raised, whether the land belongs to UIT or the Revenue Department, and for which initially a show cause notice was issued and an order of status quo was passed the proceedings for

eviction, could not be taken, especially in view of the fact that by notification under the Rajasthan Urban Improvement Trust Act, 1959, declaring particular revenue village into an Urban area, on which the provisions of Land Revenue Act will ceases to operate in such area. In Ravindra Kumar v. Swapan Choudhary and Others (supra), it was held that where the land reserved for the residential purpose becomes Abadi land, the suit cannot be decided by Revenue Court, as the Civil Court has jurisdiction to entertain the suit.

10. We do not find that the judgments of the Supreme Court, cited at the Bar, have any relevance to the facts of the present case, inasmuch as, in the present case, the appellants have, themselves, filed applications initially under Section 91 of the Act of 1956 and deposited the fees for conversion of the land, on which they had no title whatsoever. The land is still recorded in name of the Deity. The Pujari/Shebaits had no right to execute an agreement to sale in favour of the appellants, and that the proceedings in which the Tehsildar, Kishangarh had reviewed and re-reviewed his order, were considered by the Division Bench of the Revenue Board, and in which it was found that the Tehsildar could not have re-reviewed the order, after having drawn and finalised the proceedings for eviction.

11. In the present case, we do not find that submission with regard to Sub-section (5) of Section 91 of the Act of 1956 was raised and pressed before learned Single Judge, as there is no mention of the argument in the entire body of the judgment.

12. The submission of learned counsel appearing for the appellants, that on modification of the Master Plan, in which the land in dispute is shown as industrial area, the provision of Sections 91 and 90A of the Act of 1956 will not be applicable, is also misconceived, inasmuch as, the notification under the Rajasthan Urban Improvement Trust Act, 1959, declaring Master Plan delineating certain area as industrial area, did not ipso facto regularize the possession, or allow the user of the agriculture land for industrial purposes. The land, shown for industrial use in the Master Plan, does not get converted automatically into the industrial land, on such issuance of the Master Plan. It cannot be said that the provisions of the Act of 1956 on the issuance of Master Plan will cease to apply to the land falling in the areas under the Master Plan.

13. In the present case, having obtained the agreement to sale from the Pujaris/ Shebaits, who had absolutely no right to transfer the land, the appellants started using the land, and have constructed office rooms and go-downs, and have installed cutting machines for cutting the marble and constructed sheds. We do not find any error of law in the findings of learned Single Judge that the appellants have no right, title or interest over the land, and thus they could not have applied for conversion of land use for industrial purposes from Revenue Department, under the provisions of Section 91 of the Act of 1956. The applicability of the provisions of Section 91 of the Act of 1956 was never argued or pressed before learned Single Judge.

14. It is submitted by learned counsel appearing for the appellants that written arguments were filed, in which it was stated that the provisions of Section 90A(5) are applicable, and thus the land could be regularized for the industrial purposes, for which it was notified under the Master Plan. The filing of written arguments either before or after the arguments are addressed do not oblique the Court to record and meet such ground, unless it is argued and pressed by the counsel arguing the case. If the petitioners are aggrieved by the non-consideration of the arguments and the applicability of Section 90A(5) of the Act of 1956, it was always open to them to file a review petition before learned Single Judge.

15. With the aforesaid discussion, the Special Appeals are dismissed.

16. A copy of this order will be placed in all connected files.

